

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DUKE BOLTER,

Plaintiff,

v.

FRANCISCO JACQUES, et al.,

Defendants.

No. C 09-04587 CW (PR)

ORDER GRANTING PLAINTIFF AN
EXTENSION OF TIME TO PROVIDE
COURT WITH PROOF OF SERVICE
UPON DEFENDANTS; DENYING HIS
APPLICATION TO PROCEED IN FORMA
PAUPERIS; AND DENYING HIS
MOTION FOR SERVICE OF THE
AMENDED COMPLAINT BY THE U.S.
MARSHALL

Plaintiff, a state prisoner, filed the present pro se prisoner
action under 42 U.S.C. § 1983.

On May 3, 2010, he filed a first amended complaint.

Plaintiff paid the full filing fee in this action; therefore,
the Court reviewed his first amended complaint under § 1915A, and
not the provisions of the in forma pauperis statute (28 U.S.C.
§ 1915(e)). In an Order dated June 1, 2010, the Court issued its
Order finding certain claims cognizable, dismissing other claims
with leave to amend, and directing Plaintiff to provide the Court
with proof of service of the summons and first amended complaint
upon Defendants Weningham, Sayre, McLean, Risenhoover and Flowers.
He was also informed that the failure to do so shall result in the
dismissal of all claims against these Defendants.

In an Order dated October 8, 2010, the Court granted Plaintiff
an extension of time to provide the Court with proof of service of
the summons and first amended complaint upon Defendants Weningham,
Sayre, McLean, Risenhoover and Flowers.

1 Before the Court is Plaintiff's second motion for an extension
2 of time to provide the Court with proof of service of the summons
3 and first amended complaint upon Defendants Weningham, Sayre,
4 McLean, Risenhoover and Flowers. Also before the Court are
5 Plaintiff's motion for leave to proceed in forma pauperis and his
6 "Motion Requesting Court Order [the] United States Marshal to Serve
7 Amended Complaint/Waiver Forms on All Defendants." Having read and
8 considered Plaintiff's requests, and good cause appearing,

9 IT IS HEREBY ORDERED that the Court GRANTS Plaintiff's request
10 for an extension of time to provide the Court with proof of service
11 of the summons and first amended complaint upon Defendants
12 Weningham, Sayre, McLean, Risenhoover and Flowers (docket no. 21),
13 and that the time to do so will be extended up to and including
14 sixty (60) days from the date of this Order. Failure to do so by
15 the new deadline shall result in the dismissal of all claims
16 against these Defendants.

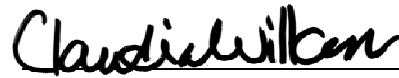
17 As mentioned above, Plaintiff has paid the requisite filing
18 fee; however, he moves to proceed in forma pauperis under 28 U.S.C.
19 § 1915 as to all other aspects of this case. The trust account
20 materials indicate that Petitioner had an average monthly balance
21 of \$962.14 in his trust account. His balance on July 27, 2010 was
22 \$820.83. This is sufficient to cover the costs associated with
23 service of the summons and first amended complaint upon Defendants
24 Weningham, Sayre, McLean, Risenhoover and Flowers. Alternatively,
25 Plaintiff may proceed with a request for waiver of service of
26 summons or with arranging for payment to the Marshal to serve
27 summons, as explained in the Court's earlier orders.

1 Accordingly, Plaintiff's application to proceed in forma
2 pauperis under 28 U.S.C. § 1915 as to all other aspects of this
3 case (docket no. 17) is DENIED. Therefore, Plaintiff's "Motion
4 Requesting Court Order [the] United States Marshal to Serve Amended
5 Complaint/Waiver Forms on All Defendants" (docket no. 22) is also
6 DENIED.

7 This Order terminates Docket nos. 17, 21 and 22.

8 IT IS SO ORDERED.

9 Dated: 1/25/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DUKE BOLTER,

Plaintiff,

v.

FRANCISCO JACQUES et al,

Defendant.

Case Number: CV09-04587 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 25, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Duke Bolter E-13662
Pelican Bay State Prison
P.O. Box 7500
D-2 #108
Crescent City, CA 95532

Dated: January 25, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk